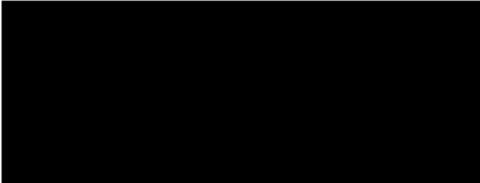




U.S. Citizenship
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FILE: WAC 04 092 53263 Office: CALIFORNIA SERVICE CENTER Date: **DEC 05 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) withdrew the decision, remanded the matter to the director for entry of a new decision, and ordered that if the decision was adverse to the petitioner it was to be certified to the AAO for review. On remand, the director denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a construction company that seeks to employ the beneficiary as an electrical engineer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the nonimmigrant visa petition on the ground that the offered position does not qualify as a specialty occupation. The AAO withdrew the decision, finding that the position qualifies as a specialty occupation, and remanded the matter to the director to determine whether the beneficiary is qualified for the position, which the AAO found to require licensure to provide services as an electrical engineer in Guam, or that such licensure was not required. The AAO ordered that if the director's decision was adverse to the petitioner it was to be certified to the AAO for review. On remand, the director issued an intent to deny notice, dated July 28, 2006, which sought evidence of the beneficiary's qualifications to perform the proposed position. The petitioner did not respond to the intent to deny notice. Thus, based on the evidence in the record, the director concluded that the beneficiary lacks the qualifications to perform the duties of an electrical engineer in Guam. The director certified his decision to the AAO for review.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE) dated March 11, 2004; (3) the petitioner's response to the RFE; (4) the director's notice of intent to deny dated May 13, 2004; (5) the petitioner's response to the notice; (6) the director's RFE dated June 3, 2004 and the petitioner's reply; (7) the director's denial letter dated October 14, 2004; (8) the AAO's May 1, 2006 decision; (9) the director's intent to deny notice dated July 28, 2006; and (10) the director's denial letter and notice of certification dated October 24, 2006. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the record, the AAO concurs with the director's finding that the beneficiary lacks the qualifications to perform the duties of the proposed position, which is an electrical engineer in Guam. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's October 24, 2006 decision is affirmed. The petition is denied.